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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING
FORMER JUDGE MARC A. GARCIA,**

No. 195

**DECISION AND ORDER
IMPOSING PUBLIC CENSURE
AND BAR PURSUANT TO
STIPULATION
(Commission Rule 127)**

INTRODUCTION AND PROCEDURAL SUMMARY

This disciplinary matter concerns former judge Marc A. Garcia, who was a judge of the Merced County Superior Court from 2007 until his resignation on May 15, 2015. The commission filed a Notice of Formal Proceedings on March 5, 2015, charging Judge Garcia¹ with misconduct in failing to disclose on his Statements of Economic Interests for the years 2008 through 2012, executed under penalty of perjury, the \$250,000 in income he received from the Terms of Dissolution agreement of a joint venture formed to provide indigent defense services through a contract with the county, and failing to disqualify in matters in which the attorney from whom he received the payments appeared before him.²

By Stipulation for Discipline by Consent (Stipulation), Judge Garcia and his counsel, Edith R. Matthai, Esq., and the examiner for the commission, Gary W. Schons, Esq., proposed that the commission resolve this matter by imposition of a censure and bar prohibiting Judge Garcia from seeking or holding judicial office, or accepting a position

¹ Former judge Garcia is referred to as Judge Garcia with reference to conduct and events that took place while he was an active judge.

² The Notice of Formal Proceedings also charged the judge with creating an appearance of impropriety by entering into an agreement that provided that he had an interest in future payments to be made under a government contract for which he would not be providing services, after he took the bench. Pursuant to stipulation, the parties agreed that it was not necessary to resolve this disputed issue as it would not affect the disposition of the case.

or an assignment as a judicial officer, subordinate judicial officer or judge pro tem with any court in the State of California, or accepting reference of work from any California state court, at any time in the future. (The Stipulation is attached to this decision.) The Stipulation includes the following terms and conditions:

1. The agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Garcia.
2. The commission shall issue a censure and bar based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. Upon acceptance by the commission, the Stipulation, the judge's affidavit of consent and the commission's decision and order shall be made public.
4. Judge Garcia waives any further proceedings and review in this matter, including formal proceedings (Commission rule 118 et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).
5. Pursuant to the agreement, Judge Garcia agrees to irrevocably resign from his position as judge effective May 15, 2015.

Pursuant to rule 127, the Stipulation was approved by the commission on May 13, 2015. Former judge Garcia resigned from the bench, effective May 15, 2015. Accordingly, the commission issues this censure and bar based on the terms and conditions of the Stipulation and based on the following Stipulated Facts and Legal Conclusions.

STIPULATED FACTS AND LEGAL CONCLUSIONS

Pursuant to the Stipulation, Judge Garcia expressly admitted the truth of the following facts and agreed to the following stated legal conclusions.

In 1999, then attorney Marc Garcia was hired as an associate by the Merced law firm of Morse & Pfeiff. In 2001, he was made a partner and the firm name was changed to Morse, Pfeiff & Garcia. At the time, Merced County had separate contracts with about a dozen attorneys to provide indigent defense services when the public defender declared a conflict. That group included attorneys Garcia and Thomas Pfeiff, who was one of several attorneys with contracts for juvenile representation.

In January 2003, a request for proposal was issued by Merced County for a contract to provide alternate indigent defense services for a flat fee. The law firm of Morse, Pfeiff & Garcia submitted a proposal, and was awarded the indigent defense services contract for a five-year term starting in fiscal year 2003/2004 and ending with fiscal year 2007/2008 (contract number 2003093). The contract specified a fixed amount per year, increasing from \$1 million to \$1.15 million, for a total contract price of approximately \$5.6 million. Payments were made by the county monthly.

The Morse, Pfeiff & Garcia law firm acted as both administrator of the contract and a provider of legal services. The contract provided for subcontracts with 8 to 10 attorneys, and Garcia and Pfeiff also handled cases under the contract.

The party contracting with the county, referred to as "Attorney," was identified as the law firm Morse, Pfeiff & Garcia. Attorney Pfeiff signed the contract and all later amendments. The contract and amendments were signed on behalf of the county by the chair of the county Board of Supervisors, and approved as to form by county counsel.

Shortly before January 2004, the firm of Morse, Pfeiff & Garcia dissolved and attorney Garcia opened his own law office in Merced, known as The Garcia Law Firm. On January 1, 2004, concurrent with the dissolution of the Morse, Pfeiff & Garcia general partnership, the Garcia Law Firm and the Law Offices of Morse & Pfeiff entered into a Joint Venture Agreement, which was signed by attorneys Garcia, Pfeiff and Cindy Morse.

The Joint Venture Agreement formed a "new general partnership" between the two firms. The joint venture was limited to the indigent defense contract: "This agreement forms a Joint Venture between the general partnership of Morse & Pfeiff and Garcia Law Firm to administer Merced County Contract 2003[0]93." The name of the joint venture was "Morse, Pfeiff & Garcia." Its location was the office address of Morse & Pfeiff. The Joint Venture Agreement provided that attorney Garcia was to receive 45.662 percent of the net profits annually under the indigent defense contract, payable monthly, and Morse & Pfeiff was to receive 54.33 percent.

On March 30, 2004, the Joint Venture Agreement was amended to provide that the County of Merced was to receive 90 days written notice prior to the withdrawal or suspension of a joint venturer and that it would be the duty of the non-withdrawing or non-expelled joint venturer to provide written notice to the county.

In April 2004, an "Assignment of Merced County Contract No. 2003093 and Consent of County of Merced" was executed to reflect the change in structure of the contracting "Attorney." Amendment No. 1 to the contract also was executed, to change the name of the contracting Attorney to the "Morse and Pfeiff and Garcia Joint Venture."

In May 2006, an amendment to the Joint Venture Agreement was executed by attorneys Garcia, Pfeiff and Morse, renaming the joint venture "Merced Defense Associates (M.D.A.)," which became known as MDA.

In July 2007, a two-year extension to the indigent defense contract was approved by the county, for fiscal year 2008/2009 through fiscal year 2009/2010 (Amendment No. 2). The number of subcontracting attorneys was increased and the fixed amount for fiscal year 2007/2008 was increased to \$1.5 million. The fixed amount was set at approximately \$1.6 million for 2008/2009 and \$1.7 million for 2009/2010.

In early October 2007, attorney Marc Garcia's judicial appointment was announced. On November 29, 2007, an agreement dissolving the joint venture was signed by attorney Garcia on behalf of the Garcia Law Firm and by Pfeiff on behalf of Morse & Pfeiff, as follows:

DISSOLUTION OF JOINT VENTURE
(Merced Defense Associates)

The Law Offices of Morse and Pfeiff (hereafter Morse and Pfeiff) and the Garcia Law Firm (hereafter Garcia), for due consideration, hereby dissolve the joint venture known as Merced Defense Associates. The entity known as Merced Defense Associates shall be the sole property of Morse and Pfeiff as of November 29, 2007.

A separate one-page agreement specifying the financial terms was also executed by attorneys Garcia and Pfeiff on November 29, 2007, as set forth below. It provided

that MDA would pay Garcia \$250,000, in monthly payments of \$4,516 starting in January 2008, and that the payments would cease if the county terminated or did not renew the indigent defense services contract.

TERMS OF DISSOLUTION OF JOINT VENTURE
(Merced Defense Associates)

The parties to this agreement, the Law Offices of Morse and Pfeiff (hereinafter Morse and Pfeiff) and the Garcia Law Firm (hereinafter Garcia), agree to dissolve the joint venture known as Merced Defense Associates under the terms expressed in this agreement. Upon execution of this agreement the joint venture shall terminate on November 29, 2007 and the entity known as Merced Defense Associates shall become the sole property of Morse and Pfeiff. The Dissolution of Joint Venture executed by the parties is herein incorporated by this reference.

The parties agree to the following terms:

1. Merced Defense Associates shall pay to Garcia the sum of four thousand five hundred sixteen dollars (\$4,516.00) on or about the first of each month commencing January 1, 2008. The funds shall be deposited into a blind trust account established by Garcia;
2. Said payments shall continue until any one of the following:
 - A. Merced Defense Associates has paid a total of two hundred fifty thousand dollars (\$250,000.00) into the account, or;
 - B. The contract between the County of Merced and Merced Defense Associates to provide indigent defense services is terminated by Merced County, or;
 - C. The contract between the County of Merced and Merced Defense Associates expires and is not renewed, or;
 - D. The compensation currently provided for in the contract between the County of Merced and Merced Defense Associates is materially reduced.

If at any time ownership of the entity known as Merced Defense Associates is transferred, for consideration, from Morse and Pfeiff to a buyer prior to payment of the entire amount mentioned in 2A above payments from Morse and Pfeiff shall continue until the entire amount is paid.

Pfeiff had emailed Garcia on November 28, attaching what he described as the two documents needed to dissolve the joint venture. He stated in the email that the "Dissolution to Dissolve the Joint Venture is the one we provide to the county," and that the "other one has the terms and incorporates the Dissolution" and "is for our business purposes only." Pfeiff's email stated that he did not plan to voluntarily relinquish the indigent defense contract at renewal time, but could not predict his intentions that far in advance, and had included a provision that the payments to Garcia would terminate if the contract was not renewed for any reason.

In January 2008, after taking the bench, Judge Garcia began receiving monthly payments of \$4,516 pursuant to the Terms of Dissolution agreement. The payments were made by check payable to Marc Garcia, and were drawn on the account of "Law Offices of Morse & Pfeiff." The checks were signed by the Morse & Pfeiff office manager. The monthly payments continued through August 2012, until Judge Garcia had been paid \$250,000. (In August 2011, during the normal course of processing all judicial mail, a judicial secretary opened an envelope addressed to Judge Garcia that contained a \$4,516 check to the judge from Morse & Pfeiff. The judge instructed the secretary not to open any of his judicial mail in the future.)

In a June 2008 letter from Pfeiff to the county analyst who was the primary county contact for the indigent defense services contract from 2003 through 2012, Pfeiff stated, "You recently requested confirmation that Marc Garcia no longer has an interest in MDA. I have enclosed herewith a copy of our agreement terminating his interest." The one-page Dissolution of Joint Venture was attached. The Terms of Dissolution agreement was not attached.

When Judge Garcia took the bench in 2007, he was initially assigned to a civil department. In 2009, he was reassigned from a civil department to a criminal

department. He heard preliminary hearings and felony trials in 2009, and misdemeanors in 2010. Since 2011 he had been assigned to a felony trial department. Pfeiff and other MDA attorneys regularly appeared before him. He did not disclose to his presiding judges the Terms of Dissolution agreement or that pursuant to the Terms of Dissolution agreement, he was receiving monthly payments as described above.

In mid-2009, Pfeiff presented the county with a request for approval of a contract extension. In October 2009, a three-year extension to the contract was approved, from fiscal year 2010/2011 through fiscal year 2012/2013 (Amendment No. 3). The fixed amount was set at approximately \$1.7 million for 2011/2012, and \$1.8 million for 2012/2013. In July 2011, a two-year extension was approved, for fiscal years 2013/2014 and 2014/2015 (Amendment No. 4).

The county was not at any point made aware, including in 2009 when it agreed to renew the indigent defense contract, by Judge Garcia or otherwise, of either the Terms of Dissolution agreement or that the judge was receiving ongoing payments pursuant to that agreement as described above.

On Judge Garcia's Statements of Economic Interests for the years 2008 through 2012, executed under penalty of perjury, he failed to disclose the \$250,000 in income he received pursuant to the Terms of Dissolution agreement. In March 2014, he filed amended Statements of Economic Interests for the years 2008 through 2012. He reported the income on Schedule C as "Sale of Interest in joint venture agreement in MDA." The source of income is identified as "Merced Defense Associates/Morse & Pfeiff."

Judge Garcia's conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in the integrity of the judiciary) and 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

From 2009 through August 2012, while Judge Garcia was assigned to a criminal department and payments to him pursuant to the Terms of Dissolution agreement were ongoing, the judge failed to disqualify himself in matters in which attorney Pfeiff

appeared before him, including numerous MDA cases. Judge Garcia failed to disclose his ongoing financial relationship with Pfeiff and MDA. He also failed to disclose the ongoing financial relationship with Pfeiff and MDA in matters in which other MDA attorneys appeared before him.

Judge Garcia's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3E(1) (a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law), 3E(2)(a) (in all trial court proceedings, a judge shall disclose information relevant to disqualification) and former canon 3E(2) (predecessor to canon 3E(2)(a)).

The Notice of Formal Proceedings alleged that the Terms of Dissolution agreement provided that Judge Garcia had an interest in future payments to be made under a government contract for which he would not be providing services, after he took the bench. It was alleged that by entering into that agreement and accepting payments pursuant to it, he violated the Code of Judicial Ethics, canons 1, 2, 2A, 4A(1) (a judge shall conduct all of the judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially), 4D(1)(b) (a judge shall not engage in financial and business dealings that involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves), and 4D(4) (a judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification and as soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification). Judge Garcia disputed that there was any impropriety in the Terms of Dissolution agreement or in his receipt of funds pursuant to the agreement. In light of former judge Garcia's irrevocable resignation from judicial office and stipulation to the imposition of a censure and bar, it is not necessary to resolve these disputed issues as they would not affect the disposition of the case.

The Notice of Formal Proceedings further alleged that in furtherance of Judge Garcia's interest in continuing to receive payments under the Terms of Dissolution

agreement, he concealed the fact that he had entered into an agreement in which he had an interest in future payments under the MDA contract, and concealed the fact that he was receiving payments from funds paid by the county to MDA after he took the bench and was no longer performing services under the MDA contract. Judge Garcia disputed that there was any intent on his part to conceal the agreement or payments under the Terms of Dissolution agreement, but admitted that his conduct could give rise to an appearance of concealment and thereby violate the Code of Judicial Ethics, canons 1, 2, and 2A. In light of former judge Garcia's irrevocable resignation from judicial office and stipulation to the imposition of a censure and bar, it is not necessary to further resolve these disputed issues as they would not affect the disposition of the case.

Judge Garcia's conduct was, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute pursuant to article VI, section 18(d)(2) of the California Constitution.

Judge Garcia had no prior discipline.

DISCIPLINE

Article VI, section 18(d) of the California Constitution provides that the commission may "censure a judge or former judge ... for action ... that constitutes willful misconduct in office, ... or conduct prejudicial to the administration of justice that brings the judicial office into disrepute" Former judge Garcia concedes that his conduct as stipulated was, at a minimum, prejudicial to the administration of justice that brings the judicial office into disrepute. The failure to disclose on state financial disclosure forms, filed under penalty of perjury, \$250,000 received from the dissolution of a joint venture in a county contract for indigent defense, and the failure to disclose or disqualify when attorneys who had an interest in the contract appeared before the judge seriously undermine public confidence in the integrity and impartiality of the judiciary.

The purpose of a commission disciplinary proceeding is "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity ... of the judicial system." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, citing *Adams v. Commission on*

Judicial Performance (1995) 10 Cal.4th 866, 912.) The commission believes that this purpose is best served by the discipline proposed in the Stipulation, which constitutes the maximum discipline that may be imposed on a former judge.

Accordingly, the commission hereby censures former judge Marc A. Garcia and bars him from receiving an assignment, appointment, or reference of work from any California state court.

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Ms. Mary Lou Aranguren; Ms. Pattyl A. Kasparian; Hon. Thomas M. Maddock; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Mr. Lawrence J. Simi; Mr. Richard Simpson; Ms. Sandra Talcott; and Mr. Adam N. Torres voted to issue this decision and order imposing a public censure and bar pursuant to the Stipulation.

Date: May 18, 2015



Hon. Erica R. Yew, Chairperson

STIPULATION

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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE MARC A. GARCIA,

No. 195

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 127)

Pursuant to Rules of the Commission on Judicial Performance, rule 127, Judge Marc A. Garcia of the Merced County Superior Court, represented by counsel Edith R. Matthai of Robie and Matthai, and commission examiner Gary W. Schons, Esq. ("the parties") submit this proposed disposition of Inquiry No. 195. The parties request that the commission resolve this matter by imposition of a censure and bar.

The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Garcia because, among other reasons, in light of the stipulated facts and legal conclusions, and the judge's agreement to resign from office, a censure and bar adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Garcia.
2. The commission shall issue a censure and bar based on the agreed Stipulated Facts and Legal Conclusions set forth therein.

3. If the commission accepts this proposed disposition, the commission's decision and order imposing a censure and bar may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

4. Upon acceptance by the commission, this stipulation, the judge's affidavit of consent and the commission's decision and order shall be made public.

5. Judge Garcia waives any further proceedings and review in this matter, including formal proceedings (rules 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. Pursuant to this agreement, Judge Garcia has agreed to irrevocably resign from his position as a judge effective May 15, 2015. Judge Garcia shall use accrued vacation or other leave time and be absent from the bench between the date of this agreement and May 15, 2015. Judge Garcia represents and warrants that he has sufficient vacation/leave time to be absent from the bench between the date of this agreement and May 15, 2015, and that his presiding judge will allow him to be absent during that period.

Judge Garcia shall tender his irrevocable resignation from judicial office in writing to the Governor of California, within two days of being notified by the commission in writing of its acceptance of the proposed disposition. The commission's decision imposing a censure and bar pursuant to this stipulation shall issue as soon as practicable after the effective date of the judge's resignation.

7. If Judge Garcia fails to resign in accordance with this agreement, the commission shall continue the pending formal proceedings. Failure to comply with the terms and conditions of this agreement may also constitute additional and independent grounds for discipline.

8. The commission may reject this proposed disposition and continue the formal proceedings. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Garcia.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a censure and bar on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions:

STIPULATED FACTS AND LEGAL CONCLUSIONS

In 1999, then attorney Marc Garcia was hired as an associate by the Merced law firm of Morse & Pfeiff. In 2001, he was made a partner and the firm name was changed to Morse, Pfeiff & Garcia. At the time, Merced County had separate contracts with about a dozen attorneys to provide indigent defense services when the Public Defender declared a conflict. That group included attorneys Garcia and Pfeiff, who was one of several attorneys with contracts for juvenile representation.

In January 2003, a request for proposal was issued by Merced County for a contract to provide alternate indigent defense services for a flat fee. The law firm of Morse, Pfeiff & Garcia submitted a proposal, and was awarded the indigent defense services contract for a five-year term starting in fiscal year 2003/2004 and ending with fiscal year 2007/2008 (contract number 2003093). The contract specified a fixed amount per year, increasing from \$1 million to \$1.15 million, for a total contract price of approximately \$5.6 million. Payments were made by the county monthly.

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The party contracting with the county, referred to as "Attorney," was identified as the firm Morse, Pfeiff & Garcia. Attorney Pfeiff signed the contract and all later amendments. The contract and amendments were signed on behalf of the county by the Chair of the County Board of Supervisors, and approved as to form by County Counsel.

Shortly before January 2004, the firm of Morse, Pfeiff & Garcia dissolved and attorney Garcia opened his own law office in Merced, known as The Garcia Law Firm. On January 1, 2004, concurrent with the dissolution of the Morse, Pfeiff & Garcia general partnership, the Garcia Law Firm and the Law Offices of Morse & Pfeiff entered into a Joint Venture Agreement, which was signed by attorneys Garcia, Pfeiff and Morse.

The Joint Venture Agreement formed a "new general partnership" between the two firms. The joint venture was limited to the indigent defense contract: "This agreement forms a Joint Venture between the general partnership of Morse & Pfeiff and

Garcia Law Firm to administer Merced County Contract 2003[0]93.” The name of the joint venture was “Morse, Pfeiff & Garcia.” Its location was the office address of Morse & Pfeiff. The Joint Venture Agreement provided that attorney Garcia was to receive 45.662 percent of the net profits annually under the indigent defense contract, payable monthly, and Morse & Pfeiff was to receive 54.33 percent.

On March 30, 2004, the Joint Venture Agreement was amended to provide that the County of Merced was to receive 90 days written notice prior to the withdrawal or suspension of a joint venturer and that it would be the duty of the non-withdrawing or non-expelled joint venturer to provide written notice to the county.

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consideration, hereby dissolve the joint venture known as Merced Defense Associates. The entity known as Merced Defense Associates shall be the sole property of Morse and Pfeiff as of November 29, 2007.

A separate one-page agreement specifying the financial terms was also executed by attorneys Garcia and Pfeiff on November 29, 2007, as set forth below. It provided that MDA would pay Garcia \$250,000, in monthly payments of \$4,516 starting in January 2008, and that the payments would cease if the county terminated or did not renew the indigent defense services contract:

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The parties agree to the following terms:

1. Merced Defense Associates shall pay to Garcia the sum of four thousand five hundred sixteen dollars (\$4,516.00) on or about the first of each month commencing January 1, 2008. The funds shall be deposited into a blind trust account established by Garcia;
2. Said payments shall continue until any one of the following:
 - A. Merced Defense Associates has paid a total of two hundred fifty thousand dollars (\$250,000.00) into the account, or;
 - B. The contract between the County of Merced and Merced Defense Associates to provide indigent defense services is terminated by Merced County, or;

- C. The contract between the County of Merced and Merced Defense Associates expires and is not renewed, or;
- D. The compensation currently provided for in the contract between the County of Merced and Merced Defense Associates is materially reduced.

If at any time ownership of the entity known as Merced Defense Associates is transferred, for consideration, from Morse and Pfeiff to a buyer prior to payment of the entire amount mentioned in 2A above payments from Morse and Pfeiff shall continue until the entire amount is paid.

Pfeiff had emailed Garcia on November 28, attaching what he described as the two documents needed to dissolve the joint venture. He stated in the email that the "Dissolution to Dissolve the Joint Venture is the one we provide to the county," and that the "other one has the terms and incorporates the Dissolution" and "is for our business purposes only." Pfeiff's email stated that he did not plan to voluntarily relinquish the indigent defense contract at renewal time, but could not predict his intentions that far in advance, and had included a provision that the payments to Garcia would terminate if the contract was not renewed for any reason.

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MDA. I have enclosed herewith a copy of our agreement terminating his interest.” The one-page Dissolution of Joint Venture was attached. The Terms of Dissolution agreement was not attached.

When Judge Garcia took the bench in 2007, he was initially assigned to a civil department. In 2009, he was reassigned from a civil department to a criminal department. He heard preliminary hearings and felony trials in 2009, and misdemeanors in 2010. Since 2011 he has been assigned to a felony trial department. Pfeiff and other MDA attorneys regularly appeared before him. He did not disclose to his presiding judges the Terms of Dissolution agreement or that pursuant to the Terms of Dissolution agreement, he was receiving monthly payments as described above.

In mid-2009, Pfeiff presented the county with a request for approval of a contract extension. In October 2009, a three-year extension to the contract was approved, from fiscal year 2010/2011 through fiscal year 2012/2013 (Amendment No. 3). The fixed amount was set at approximately \$1.7 million for 2011/2012, and \$1.8 million for 2012/2013. In July 2011, a two-year extension was approved, for fiscal years 2013/2014 and 2014/2015 (Amendment No. 4).

The county was not at any point made aware, including in 2009 when it agreed to renew the indigent defense contract, by Judge Garcia or otherwise, of either the Terms of Dissolution agreement or that the judge was receiving ongoing payments pursuant to that agreement as described above.

On Judge Garcia’s Statements of Economic Interests for the years 2008 through 2012, executed under penalty of perjury, he failed to disclose the \$250,000 in income he received pursuant to the Terms of Dissolution agreement. In March 2014, he filed amended Statements of Economic Interests for the years 2008 through 2012. He reported the income on Schedule C as “Sale of Interest in joint venture agreement in MDA.” The source of income is identified as “Merced Defense Associates/Morse & Pfeiff.”

Judge Garcia’s conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in the integrity of the judiciary) and 2A (a judge shall respect

and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

From 2009 through August 2012, while Judge Garcia was assigned to a criminal department and payments to him pursuant to the Terms of Dissolution agreement were ongoing, the judge failed to disqualify himself in matters in which attorney Pfeiff appeared before him, including numerous MDA cases. Judge Garcia failed to disclose his ongoing financial relationship with Pfeiff and MDA. He also failed to disclose the ongoing financial relationship with Pfeiff and MDA in matters in which other MDA attorneys appeared before him.

Judge Garcia's conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in the integrity of the judiciary), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3E(1) (a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law), 3E(2)(a) (in all trial court proceedings, a judge shall disclose information relevant to disqualification) and former canon 3E(2) (predecessor to canon 3E(2)(a)).

The notice of formal proceedings alleged that the Terms of Dissolution agreement provided that Judge Garcia had an interest in future payments to be made under a government contract for which he would not be providing services, after he took the bench. It was alleged that by entering into that agreement and accepting payments pursuant to it, he violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in the integrity of the judiciary), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 4A(1) (a judge shall conduct all of the judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially), 4D(1)(b) (a judge shall not engage in financial and business dealings that involve the judge in frequent transactions or

continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves), and 4D(4) (a judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification and as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification). Judge Garcia disputes that there was any impropriety in the Terms of Dissolution agreement or in his receipt of funds pursuant to the agreement. In light of Judge Garcia's agreement to resign from judicial office and stipulation to the imposition of a censure and bar, it does not appear necessary to resolve these disputed issues as they would not affect the disposition of the case.

The notice of formal proceedings further alleged that in furtherance of Judge Garcia's interest in continuing to receive payments under the Terms of Dissolution agreement, he concealed the fact that he had entered into an agreement in which he had an interest in future payments under the MDA contract, and concealed the fact that he was receiving payments from funds paid by the county to MDA after he took the bench and was no longer performing services under the MDA contract. Judge Garcia disputes that there was any intent on his part to conceal the agreement or payments under the Terms of Dissolution agreement, but admits that his conduct could give rise to an appearance of concealment and thereby violate the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in the integrity of the judiciary), and 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary). In light of Judge Garcia's agreement to resign from judicial office and stipulation to the imposition of a censure and bar, it does not appear necessary to further resolve these disputed issues as they would not affect the disposition of the case.

Judge Garcia's conduct was, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute pursuant to article VI, section 18(d)(2) of the California Constitution.

II. Prior Misconduct

Judge Garcia has no prior discipline.

By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Garcia expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

Dated: _____, 2015

Judge Marc A. Garcia
Respondent

Dated: April 4, 2015

Edith R. Matthai, Esq.
Attorney for Judge Garcia

Dated: April 2, 2015


Gary W. Schons, Esq.
Examiner

II. Prior Misconduct


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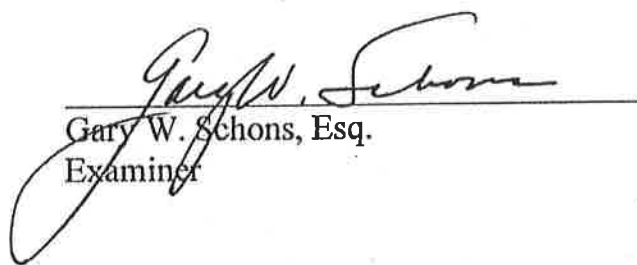
Dated: April 6, 2015


Judge Marc A. Garcia
Respondent

Dated: April 4, 2015


Edith R. Matthai, Esq.
Attorney for Judge Garcia

Dated: April 2, 2015


Gary W. Schons, Esq.
Examiner

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

RECEIVED
APR 09 2015
COMMISSION ON
JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE MARC A. GARCIA,

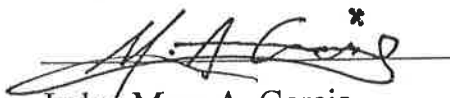
No. 195

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 127)

Pursuant to Rules of the Commission on Judicial Performance, rule 127(d), Judge Marc A. Garcia submits the following affidavit of consent:

1. I consent to a public censure and bar from receiving assignments, appointments, or references of work from any California state court, and will irrevocably resign from judicial office, as set forth in the Stipulation for Discipline by Consent.
2. My consent is freely and voluntarily rendered.
3. I admit the truth of the charges in Count 1 A and B in the Notice of Formal Proceedings and Count 1 C only to the extent specifically set forth in the Stipulation for Discipline by Consent.
4. I waive all further proceedings and review by the Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of April 2015.


Judge Marc A. Garcia
Respondent